

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/14/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-018488

FILED: _____

VILLAS WEST VI HOA

EILEEN T BALDWIN

v.

PEDRAM AZIZI, et al.

SONYA E UNDERWOOD

MARYVALE JUSTICE COURT
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and this Court has considered and reviewed the record of the proceedings from the Maryvale Justice Court, the exhibits made of record, and the Memoranda submitted by counsel.

Appellants appeal from a Judgment by the Maryvale Justice Court entitled "Findings of Fact and Conclusions of Law", signed October 1, 2001. Appellees have cross-appealed raising several substance of issues including the issue of attorney's fees and costs, both at the trial court level and on appeal. First, this Court notes that the cross-appeal, dated October 22, 2001, and filed in the Superior Court is not timely.¹ The Rules also require that the Notice of Cross-Appeal shall be filed with the

¹ See, Rule 9(a), Superior Court Rules of Appellate Procedure-Civil.
Docket Code 019

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trial court.² Unfortunately, the issues raised by Appellees in their cross-appeal concerning the judgment signed on October 1, 2001 are central to a fair and equitable disposition of this case on appeal.

This Court determines that the court's purported judgment of October 1, 2001 entitled Findings of Fact and Conclusions of Law is not an appealable judgment as contemplated by Rule 54(a), Arizona Rules of Civil Procedure. The mere fact that the Findings of Fact and Conclusions of Law is signed by the trial judge does not render it an appealable form of judgment. Rule 58(g), Arizona Rules of Civil Procedure provides:

Except as provided in Rule 54(b), a judgment shall not be entered until claims for attorneys' fees have been resolved and are addressed in the judgment. Entry of judgment shall not be delayed nor the time for appeal extended in order to tax costs. This requirement exists notwithstanding the authority in Rule 19(b), Superior Court Rules of Appellate Procedure-Civil, which empowers the Superior Court sitting as an appellate court to award attorneys fees and costs.

The Arizona Rules of Civil Procedure also requires service of a form of judgment upon all parties and counsel and, except where the judgment involves multiple claims or multiple parties, the court shall include a provision within the form of judgment for attorneys fees.³

It is clear that the trial court contemplated in its Findings of Fact and Conclusions of Law of October 1, 2001 that the attorneys for each party would submit Affidavits of

² Id.

³ See Rule 58(a), Arizona Rules of Civil Procedure.

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Attorneys Fees and Costs and that those amounts, if found to be appropriate by the trial court, would be included within a final judgment. Findings of Fact need not be signed.

It is also entirely possible that the trial court intended that its Findings of Fact and Conclusions of Law of October 1, 2001 should be a final judgment. If this was the intent of the lower court, then judgment before disposition of claims for attorneys fees would be premature.

IT IS THEREFORE ORDERED remanding this matter back to the Maryvale Justice Court with instructions to order both counsel to submit Forms of Judgment, Applications for Award of Attorneys Fees and Costs pursuant to the procedures set forth in Rule 58(a), Arizona Rules of Civil Procedure.

IT IS FURTHER ORDERED directing the Maryvale Justice Court to resolve those issues involving the parties' claims for attorneys fees prior to the signing and entry of a judgment as provided for in Rule 58(g), Arizona Rules of Civil Procedure.

IT IS FURTHER ORDERED directing the parties and counsel that Notices of Appeal and Cross-Appeal shall be filed with the trial court within those time limits provided for in Rule 9, Superior Court Rules of Appellate Procedure-Civil.